

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN A.H. EDSALL, SR.,

Plaintiff,

No. CIV S-02-2155 GEB GGH P

vs.

R.N. JOHNSON, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On March 23, 2005, the district court adopted the October 7, 2004, findings and recommendations addressing defendants' December 29, 2003, motion to dismiss. In particular, the district court denied defendants' motion for failure to exhaust administrative remedies as to the claims against defendants Burvant, Wedell, Johnson, Sims, Alameida, Peterson, Peterson, Pliler and Goughnour that they provided inadequate medical care before April 14, 2002. The district court dismissed the remaining claims for failure to exhaust. The district court also denied defendants' motion to dismiss for failure to state a claim as to defendants Johnson and Sims, but granted the motion as to defendants Alameida, Peterson, Pliler and Goughnour. The court granted plaintiff thirty days to file an amended complaint to address the pleading defects discussed in the October 7, 2004, findings and recommendations.

1 On May 12, 2005, the court granted plaintiff a thirty day extension of time to file
2 his amended complaint. Pending before the court is the amended complaint filed June 15, 2005.
3 Named in the amended complaint are four of the original defendants: Burvant, Wedell, Johnson
4 and Sims. Also named are eight new defendants: Friedman, Friederich, Aung, Luca, Brager,
5 Price-Williams, Manglis-Mot and Evans.

6 This case is now approaching three years in duration, and the case is not yet out of
7 the pleading stage. The court granted plaintiff leave to file an amended complaint addressing the
8 pleading defects contained in the complaint as to defendants Alameida, Peterson, Pliler and
9 Goughnour. Plaintiff's amended complaint does not comply with this order as it does not even
10 name these individuals as defendants. Plaintiff was not granted leave to file an amended
11 complaint naming new defendants and claims, most, if not all, are probably not exhausted.
12 Because the June 15, 2005, amended complaint does not comply with the March 23, 2005, order,
13 it is disregarded. This action will instead proceed on those claims found colorable in the March
14 23, 2005, order.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's amended complaint filed June 15, 2005, is disregarded;
17 2. Within twenty days of the date of this order defendants shall file a response to
18 those claims found colorable and exhausted in the March 23, 2005, order: defendants Burvant,
19 Wedell, Johnson and Sims provided plaintiff inadequate medical care before April 14, 2002.

20 DATED: 8/10/05

21
22 /s/ Gregory G. Hollows

23 GREGORY G. HOLLOWES
24 UNITED STATES MAGISTRATE JUDGE

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